

GUARANTY OF PERFORMANCE AND COMPLETION

This **GUARANTY OF PERFORMANCE AND COMPLETION** (“Guaranty”) is made as of _____, 200__, by **FLUOR CORPORATION**, a Delaware corporation (the “Guarantor”), to the **VIRGINIA DEPARTMENT OF TRANSPORTATION**, a department of the Commonwealth of Virginia (the “Department”) with respect to the obligations of Fluor Enterprises, Inc., a California corporation (the “Contractor”) under (i) that certain Comprehensive Agreement to Develop, Design, Finance, Construct, Maintain and Operate the Route 495 Hot Lanes in Virginia (the “Comprehensive Agreement”) dated as of April 28, 2005, by and between, the Department, the Contractor and Transurban (USA) Inc., a Delaware corporation, (ii) that certain Design-Build Contract dated as of _____, 200__ by and between the Department and the Contractor, (together, as amended, altered, varied or supplemented, the “Contracts”). The Contracts are hereby incorporated by reference herein, and capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Comprehensive Agreement. As a condition to entering into the Contracts, the Department has required the Guarantor to execute and deliver this Guaranty. The Contractor is an Affiliate of the Guarantor. The Guarantor acknowledges that financial and direct benefits will accrue to the Guarantor by virtue of entering into this Guaranty and that such benefits constitute adequate consideration therefor.

ARTICLE I

GUARANTY

Section 1.01 Guaranty. The Guarantor hereby guarantees to the Department, absolutely, unconditionally and irrevocably, that each and every payment and performance obligation and other liability of the Contractor now or hereafter arising under the Contracts or any of them, including but not limited to all obligations and liabilities of the Contractor under any and all representations and warranties made or given by the Contractor under the Contracts, under any and all liquidated or stipulated damage provisions of the Contracts and under any and all indemnities given by the Contractor under the Contracts (collectively the “Guaranteed Obligations”) will be promptly paid and satisfied in full when due and without offset, and performed and completed when required.

Section 1.02 Obligations. Except as otherwise provided in Section 4.06 below, the obligations of the Guarantor hereunder are absolute and unconditional and independent of the Guaranteed Obligations of the Contractor and shall remain in full force and effect until all the Guaranteed Obligations have been paid, performed and completed in full, irrespective of any assignment, amendment, modification or termination of the Contracts.

Section 1.03 No Exoneration. Except as otherwise provided in Section 4.06 below, the obligations of the Guarantor hereunder shall not be released, discharged, exonerated or impaired in any way by reason of:

(a) any failure of the Department to retain or preserve any rights against any person;

(b) the lack of prior enforcement by the Department of any rights against any person and the lack of exhaustion of any bond, letter of credit or other security held by the Department;

(c) the lack of authority or standing of the Contractor or the dissolution of the Guarantor, the Contractor, or the Department;

(d) with or without notice to the Guarantor, the amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or failure to assert, any portion of the Guaranteed Obligations, the Contracts, any rights or remedies of the Department (including rights of offset) against the Contractor, or any bond, letter of credit, other guaranty, instrument, document, collateral security or other property given or available to the Department to secure all or any part of the Guaranteed Obligations; *provided* that, notwithstanding the foregoing, the Guarantor shall have available to it any and all defenses to performance of the Guaranteed Obligations that may be available to the Contractor based on any such amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination or failure to assert voluntarily made by the Department, except defenses available to the Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors;

(e) the extension of the time for payment of any amount owing or payable under the Contracts or of the time for performance or completion of any Guaranteed Obligation; *provided, however*, that to the extent the Department grants the Contractor an extension of time under the Design-Build Contract for performance of any of the obligations of the Contractor thereunder, such extension of time shall likewise extend the time for performance by the Guarantor;

(f) except as otherwise provided in subsections (d) and (e) above, the taking or the omission of any of the actions referred to in the Contracts or of any actions under this Guaranty;

(g) the existence now or hereafter of any other guaranty or endorsement by the Guarantor or anyone else of all or any portion of the Guaranteed Obligations;

(h) the acceptance, release, exchange or subordination of additional or substituted security for all or any portion of the Guaranteed Obligations;

(i) the taking of any action or the failure to take any action which would constitute a legal or equitable defense, release or discharge of a surety;

(j) any bankruptcy, arrangement, reorganization or similar proceeding for relief of debtors under federal or state law hereinafter initiated by or against the Contractor or any of its members, or the Department;

(k) any full or partial payment or performance of any Guaranteed Obligation which is required to be returned as a result of or in connection with the insolvency, reorganization or bankruptcy of the Contractor or any of its members or otherwise;

(l) the rejection of any Contract in connection with the insolvency, reorganization or bankruptcy of the Contractor or any of its members;

(m) an impairment of or limitation on damages due from the Contractor by operation of law in any insolvency, reorganization or bankruptcy proceeding by or against the Contractor or any of its members;

(n) failure by the Department to file or enforce a claim against the estate (either in administration, bankruptcy or other proceedings) of Contractor, any of its members, the Guarantor or any other guarantor;

(o) any merger, consolidation or other reorganization to which the Contractor, the Department or the Guarantor is a party;

(p) any sale or disposition of all or any portion of the Guarantor's direct or indirect ownership in the Contractor, or any other event which results in discontinuation or interruption in the business relations of Contractor with the Guarantor;

(q) except as otherwise provided in subsection (d) above, the lack of genuineness, validity, regularity or enforceability of any of the Guaranteed Obligations or the Contracts;

(r) the failure of the Department to assert any claim or demand, bring any action or exhaust its remedies against the Contractor or any security before proceeding against the Guarantor hereunder after the expiration of applicable notice and cure periods; or

(s) the termination of any Contract by reason of the Contractor's default thereunder.

Section 1.04 Enforcement of Contracts and Guaranteed Obligations.

(a) Nothing contained herein shall prevent or limit the Department from pursuing any of its rights and remedies under the Contracts, or any provisions thereof, according to their respective terms. The Department may apply any moneys, property or security available to it in such manner and amounts and at such times to the payment or reduction or performance of any Guaranteed Obligation as the Department may elect, and may generally deal with Contractor, the Guaranteed Obligations, such security and property as the Department may see fit. Notwithstanding the foregoing, the Guarantor shall remain bound by this Guaranty.

(b) Subject to Section 4.06 below, the Guarantor shall be obligated to undertake all curative action which may be agreed upon between the Department, the Guarantor and the Contractor. If following notice under Section 4.06 below, the Guarantor does not use commercially reasonable efforts to proceed promptly to effectuate such curative action within a reasonable time, or should no agreement on the curative action be reached within 14 days after the Department notifies the Contractor and the Guarantor (or such longer period as may be permitted under Section 4.06 below) of the need for curative action (or immediately, in the case of emergency conditions), the Department, without further notice to the Guarantor, shall have the right to perform or have performed by third parties the necessary curative action, and the costs thereof shall be borne by the Guarantor.

(c) The Department may bring and prosecute a separate action or actions against the Guarantor to enforce its liabilities hereunder, regardless of whether any action is brought against the Contractor and regardless of whether any other person is joined in any such action or actions. Nothing shall prohibit the Department from exercising its rights against any of the Guarantor, the Contractor, any other guarantor of the Guaranteed Obligations, a performance bond or other security, if any, which insures the payment of the Guaranteed Obligations, or any other person simultaneously, or any combination thereof jointly and/or severally.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties. The Guarantor hereby represents and warrants that:

(a) Consents. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation. The Contractor is a wholly-owned subsidiary of the Guarantor. Consent of the Contractor to any modification or amendment of the Contracts constitutes knowledge thereof and consent thereto by the Guarantor;

(b) Organization and Existence. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation;

(c) Power and Authority. The Guarantor has the full power and authority to execute, deliver and perform this Guaranty, and to own and lease its properties and to carry on its business as now conducted and as contemplated hereby;

(d) Authorization and Enforceability. This Guaranty has been duly authorized, executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with the terms hereof, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating, to or affecting the enforcement of creditors' rights generally, as applicable to the Guarantor, and to general principles of equity;

(e) No Governmental Consents. No authorization, consent or approval of, notice to or filing with, any governmental authority, is required for the execution, delivery and performance by the Guarantor of this Guaranty;

(f) No Conflict or Breach. Neither the execution, delivery or performance by the Guarantor of this Guaranty, nor compliance with the terms and provisions hereof, conflicts or will conflict with or will result in a breach or violation of any material terms, conditions, or provisions of any Laws, Regulations and Ordinances applicable to the Guarantor or the charter documents, as amended, or bylaws, as amended, of the Guarantor, or any order, writ, injunction or decree of any court or governmental authority against the Guarantor or by which it or any of its properties is bound, or any indenture, mortgage or contract or other agreement or instrument to which the Guarantor is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien upon any of its properties;

(g) No Proceedings. There are no suits or proceedings pending, or, to the knowledge of the Guarantor, threatened in any court or before any regulatory commission, board or other governmental administrative agency against the Guarantor which could reasonably be expected to have a material adverse affect on the business or operations of the Guarantor, financial or otherwise, or on its ability to fulfill its obligations hereunder; and

(h) Contracts. The Guarantor is fully aware of and consents to the terms and conditions of the Contracts.

ARTICLE III

WAIVERS, SUBROGATION AND SUBORDINATION

Section 3.01 Waivers.

(a) The Guarantor hereby unconditionally waives:

(i) notice of acceptance of this Guaranty or of the intention to act in reliance hereon and of reliance hereon;

(ii) notice of the incurring, contracting, amendment, alteration, acceleration, extension, waiver, retirement, suspension, surrender, compromise, settlement, release, revocation or termination of, or of the failure to assert, any Guaranteed Obligation or any Contract;

(iii) demand on the Guarantor in the event of default except demand as set forth in Section 4.06 below;

(iv) any invalidity of the Contracts due to lack of proper authorization of or a defect in execution thereof by the Contractor, its purported representatives or agents;

(v) demand for payment or performance, presentment, protest and notice of nonpayment or dishonor respecting any Guaranteed Obligation;

(vi) all other notices to which the Guarantor might otherwise be entitled, except notice as set forth in Section 4.06 below;

(vii) any demand for payment hereunder except as set forth in Section 4.06 below;

(viii) the provisions of Sections 49-25 and 49-26 of the Code of Virginia of 1950, as amended; and

(ix) any duty on the part of the Department to disclose to the Guarantor any facts the Department may now or hereafter know with regard to Contractor.

(b) The Guarantor also hereby waives any right to require, and the benefit of all laws now or hereafter in effect giving the Guarantor the right to require, any prior enforcement as referred to in Section 1.03(b) above, and the Guarantor agrees that any delay in enforcing or failure to enforce any such rights or in making demand on the Guarantor for the performance of the obligations of the Guarantor under this Guaranty shall not in any way affect the liability of the Guarantor hereunder.

(c) The Guarantor hereby waives, as against the Department or any person claiming under the Department, all rights and benefits which might accrue to the Guarantor by reason of any of bankruptcy, arrangement, reorganization or similar proceedings by or against the Contractor and agree that their obligations and liabilities hereunder shall not be affected by any modification, limitation or discharge of the obligations of the Contractor that may result from any such proceedings.

(d) Until the Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor hereby agrees not to file, or solicit the filing by others of, any involuntary petition in bankruptcy against the Contractor.

Section 3.02 Subrogation. Until the Contractor shall have fully and satisfactorily paid, performed, completed and discharged all the Guaranteed Obligations, the Guarantor shall not claim or enforce any right of subrogation, reimbursement or indemnity against the Contractor, or any other right or remedy which might otherwise arise on account of any payment made by the Guarantor or any act or thing done by the Guarantor on account of or in accordance with this Guaranty.

Section 3.03 Subordination.

(a) All existing or future indebtedness of the Contractor to the Guarantor is

subordinated to all of the Guaranteed Obligations. Whenever and for so long as Contractor shall be in default in the performance or payment of any Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by Contractor to the Guarantor without the prior written notice to the Department.

(b) The Guarantor shall file all claims against Contractor in any bankruptcy or other proceedings in which the filing of claims is required or permitted by law upon any obligation or indebtedness of the Contractor to the Guarantor, and shall have assigned to the Department all of the Guarantor's rights thereunder to the extent of outstanding and unsatisfied Guaranteed Obligations. If the Guarantor does not file any such claim, the Department is authorized as the Guarantor's attorney-in-fact to do so in the Guarantor's name, or in the Department's discretion, the Department is authorized to assign the claim to, and cause proof of claim to be filed in the name of, the Department or its nominee. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to the Department or its nominee the full amount payable on the claim in the proceeding before making any payment to the Guarantor, and to the full extent necessary for that purpose, the Guarantor assigns to the Department all of its rights to any payments or distributions to which it otherwise would be entitled. If the amount so paid is in excess of the Guaranteed Obligations covered hereby, the Department shall pay the amount of the excess to the party determined by it to be entitled thereto.

ARTICLE IV

MISCELLANEOUS

Section 4.01 Enforcement of Guaranty.

(a) The terms and provisions of this Guaranty shall be governed by and interpreted in accordance with the laws of the State applicable to contracts executed and to be performed within the State.

(b) No supplement, amendment, modification, waiver or termination of this Guaranty shall be binding unless executed in writing and duly signed by the Guarantor and the Department. No waiver of any of the provisions of this Guaranty shall be deemed or shall constitute a waiver of any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. No failure on the part of the Department to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise of any other right.

(c) All disputes between the Department and the Guarantor arising under or relating to this Guaranty or its breach shall be filed, heard and decided in the Circuit Court for the City of Richmond, Virginia, Division I, which shall have exclusive jurisdiction and venue. The Guarantor hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of any action or proceedings in such court arising out of or relating to this Guaranty. The Guarantor agrees that a final non-appealable

judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Guarantor agrees and consents to service of process by delivery in the manner and to the address set forth in Section 4.02 below. Nothing in this section shall affect the right of the Department to serve legal process in any other manner permitted by law.

(d) The rights of the Department hereunder are cumulative and shall not be exhausted by any one or more exercises of said rights against the Guarantor or other guarantors or by any number of successive actions until and unless all Guaranteed Obligations have been fully paid or performed.

(e) The Guarantor shall pay to the Department all reasonable out-of-pocket legal fees and other reasonable out-of-pocket costs and expenses (including fees and costs on appeal) the Department incurs by reason of any permitted enforcement by the Department of its rights hereunder, *provided* that the Department is the prevailing party with respect to a substantial portion of its claim.

(f) THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION OR CLAIM WHICH IS BASED ON, OR ARISES OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED BY THIS GUARANTY.

Section 4.02 Notices. All notices, demands or other communications under this Guaranty shall be in writing and shall be sent to each other party, at its address specified below (or such other address as a party may from time to time specify to the other parties by notice given in accordance with this Guaranty), and shall be deemed to have been duly given when actually received by the addressee or when served:

- (a) personally;
- (b) by independent, reputable, overnight commercial courier; or
- (c) by deposit in the United States mail, postage and fees fully prepaid, registered or certified mail, with return receipt requested. addressed as follows

If to the Department:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attn: Commissioner

with a copy to:

Richard L. Walton, Esq.

Office of the Attorney General
Senior Assistant Attorney General
900 E. Main Street
Richmond, Virginia 23219

If to the Guarantor:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29607-2762
Attn: Robert Free, Controller

with copies to:

Fluor Corporation
100 Fluor Daniel Drive
Greenville, SC 29602-2762
Attn: Richard Fierce, General Counsel

Section 4.03 Severability. If any provision of this Guaranty shall for any reason be held invalid or unenforceable, to the fullest extent permitted by law, such invalidity or unenforceability shall not affect any other provisions hereof, but this Guaranty shall be construed as if such invalid or unenforceable provision had never been contained herein.

Section 4.04 Assignment. Neither this Guaranty nor any of the rights, interest or obligations hereunder shall be assigned or delegated by the Guarantor without the prior written consent of the Department. This Guaranty and all of the provisions hereof shall be binding upon the Guarantor and its successors and permitted assigns and shall inure to the benefit of the Department and its respective successors and assigns.

Section 4.05 No Third Party Beneficiaries. Nothing in this Guaranty shall entitle any person other than the Department and its successors and assigns to any claim, cause or action, remedy or right of any kind.

Section 4.06 Certain Rights, Duties, Obligations and Defenses. Notwithstanding Section 1.02, 1.03 and 3.01 above, the Guarantor shall have all rights, duties, obligations and defenses available to the Contractor under the Contracts relating to waiver, surrender, compromise, settlement, release or termination voluntarily made by the Department failure to give notice of default to the Contractor to the extent required by the Contracts, interpretation or performance of terms and conditions of the Contracts, or other defenses available to the Contractor under the Contracts except those expressly waived in this Guaranty and defenses available to the Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against the Guarantor shall be subject to no prior notice or demand except for 14 days' prior written notice to the Guarantor setting forth the default or breach of Guaranteed Obligation on the part of the Contractor and demand for payment or performance of such Guaranteed Obligation, provided that (i) if such default or

breach is incapable of cure within 14 days despite the Guarantor's exercise of commercially reasonable efforts, such 14 day cure period shall be extended for such additional time as reasonably may be required to effect such cure, and (ii) immediate action after written notice may be required of the Guarantor in the case of emergency conditions.

Section 4.07 Mergers, etc. The Guarantor shall not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person or sell, assign, convey, transfer, lease or otherwise dispose of any material portion of its properties and assets to any person or group of affiliated persons, unless:

- (a) in case of a merger, the Guarantor shall be the continuing corporation; or
- (b) the person (if other than the Guarantor) formed by such consolidation or into which the Guarantor merges or the person (or group of affiliated persons) that acquires by sale, assignment, conveyance, transfer, lease or other disposition a material portion of the properties and assets of the Guarantor shall expressly agree to perform all of the obligations of the Guarantor hereunder, as a joint and several obligor with the Guarantor if the Guarantor continues to exist after such transaction, by a writing in form and substance reasonably satisfactory to the Department.

Notwithstanding the agreement by any such person to perform the obligation of the Guarantor hereunder, the Guarantor shall not be released from its obligations hereunder unless released by operation of law or by consent.

Section 4.08 Survival. The obligations and liabilities of the Guarantor hereunder shall survive termination of any or all of the Contracts or the Contractor's rights thereunder due to default by the Contractor thereunder.

Section 4.09 Headings. The Article and Section headings in this Guaranty are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

Section 4.10 Counterparts. This Guaranty may be executed in one or more counterparts, all of which shall constitute one and the same instrument.

Section 4.11 Entire Agreement. This Guaranty constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. The Guarantor agrees to execute, have acknowledged and delivered to the Department such other and further instruments as may be reasonably required by the Department to effectuate the intent and purpose hereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed as of the day and year first above written by its duly authorized officer.

FLUOR CORPORATION,
a Delaware corporation

By: _____

Name: _____

Title: _____

Receipt of this Guaranty is hereby acknowledged and accepted effective as of the ____ day of _____, 200_.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
a department of the Commonwealth of Virginia

By: _____

Name: _____

Title: _____